

Linklaters

Linklaters LLP
1345 Avenue of the Americas
New York, NY 10105
Telephone (+1) 212 903 9000
Facsimile (+1) 212 903 9100
Direct Line (+1) 212 903 9028
james.warnot@linklaters.com

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

By ECF

September 16, 2015

In re Foreign Exchange Benchmark Rates Antitrust Litigation, 13 Civ. 7789 (LGS)

Dear Judge Schofield:

Defendants Société Générale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., RBC Capital Markets, LLC, and Standard Chartered PLC (collectively, the "New Defendants") write in reference to Monday's Order (ECF No. 463), which modified the stay in the Consolidated Action to allow document discovery to commence against the Settling Defendants as well as the Non-Settling Defendants. On its face, Plaintiffs' September 11, 2015 letter ("Stay Modification Letter") does not appear to contemplate a request to modify the stay as against the New Defendants, and we do not interpret Monday's Order as having done so; nevertheless, for the avoidance of confusion, we submit this letter to state briefly the New Defendants' position on discovery.

In their Stay Modification Letter, Plaintiffs requested that the Court modify the stay both (i) "to allow the Settling Defendants to provide documents to Plaintiffs pursuant to their cooperation obligations under the settlement agreements," and (ii) "to allow document discovery as to the parties in the Consolidated Action," against whom "[t]he Court has already ruled that Plaintiffs have stated a legal claim for relief under the Sherman Act" (i.e., the Non-Settling Defendants listed in Plaintiffs' letter). Unlike the Settling and Non-Settling Defendants, however, which have been parties to this action for nearly two years, the New Defendants were added only recently, when Plaintiffs filed their Second Consolidated Amended Class Action Complaint ("SAC") on July 31, 2015 (ECF No. 368). There has been no finding by this Court that Plaintiffs have stated a legal claim against the New Defendants – whether under the Sherman Act, the Commodity Exchange Act, or otherwise – and the New Defendants dispute that they have stated such a claim. To that end, and in light of the particularly sparse allegations against the New Defendants, each of the New Defendants plans to file a motion to dismiss the SAC. Furthermore, we expect that some if not all of the New Defendants will move to dismiss for lack of personal jurisdiction. We are discussing with Plaintiffs' counsel a briefing schedule for the motions to

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dismiss and anticipate presenting an agreed schedule for the Court's approval. In light of the status of the case and these impending motions, discovery from the New Defendants would be inappropriate unless and until the Court has determined that it may exercise personal jurisdiction over the New Defendants and that Plaintiffs have stated a valid claim for relief. This is also consistent with the Court's prior judgment in this case, whereby discovery against the Settling and Non-Settling defendants was stayed pending the resolution of their motion to dismiss (ECF No. 145).

Because the Stay Modification Letter and the Court's Order are consistent with the New Defendants' position on discovery, we do not seek any relief or clarification from the Court at this time; rather, we submit this letter simply to provide clarity as to our position. As the Court is aware, all Defendants are scheduled to meet in person with Plaintiffs next Monday, September 21, 2015, in compliance with the Court's August 17, 2015 Order (ECF No. 413) concerning how the parties wish to proceed with discovery. As directed, the parties will report back to the Court shortly thereafter.

Respectfully submitted,

LINKLATERS LLP

By: /s/ James R. Warnot, Jr.
James R. Warnot, Jr.
Patrick C. Ashby
1345 Avenue of the Americas
New York, New York 10105
Telephone: (212) 903-9000
Facsimile: (212) 903-9100
james.warnot@linklaters.com
patrick.ashby@linklaters.com

Attorneys for Defendant Société Générale S.A.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: /s/ Andrew C. Finch
Andrew C. Finch
Kenneth A. Gallo
Michael E. Gertzman
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
afinch@paulweiss.com
kgallo@paulweiss.com
mgertzman@paulweiss.com

Attorneys for Defendant The Bank of Tokyo-Mitsubishi UFJ, Ltd.

MOORE & VAN ALLEN, PLLC

By: /s/ James P. McLoughlin, Jr.
James P. McLoughlin, Jr.
Neil T. Bloomfield
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Telephone: (704) 331-1000
Facsimile: (704) 331-1159
jimmccloughlin@mvalaw.com
neilbloomfield@mvalaw.com

Attorneys for Defendant RBC Capital Markets, LLC

SIDLEY AUSTIN LLP

By: /s/ Andrew W. Stern
Andrew W. Stern
Nicholas P. Crowell
Alan M. Unger
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
astern@sidley.com
ncrowell@sidley.com
aunger@sidley.com

Attorneys for Standard Chartered PLC